

11/07/2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AF 09-0688

GOODRICH & REELY PLLC
ATTORNEYS AT LAW

November 3, 2016

Hon. Mike McGrath, Chief Justice
Montana Supreme Court
PO Box 203003
Room 323 Justice Building
215 N. Sanders
Helena, MT 59620-3003

FILED

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Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

RE: Changing MRPC 1.8(e)(1)

Dear Justice McGrath and Justices of the Montana Supreme Court:

I apologize for the possibility that my comment on this subject is late. I hope you will consider it anyway since I was at the forefront of the request to adopt mandatory IOLTA in Montana.

I was the State Bar of Montana Pro Bono Director from 1996-2002. In that role, I wrote the successful Petition to Adopt Mandatory IOLTA, even though it was signed by Doug Wold in his role at the time. I received guidance on its content from the ABA and a few other states with mandatory IOLTA programs, but the research and reasoning was mine.

The rule requiring all Montana Lawyers to participate in the IOLTA program, and to report on their participation, was meant to shore up the ailing coffers of the Montana Justice Foundation and enable it to make grants to support pro bono efforts, Montana Legal Services, and other worthwhile endeavors aiding needy people in this State.

While the rule as adopted almost 20 years ago mentioned that it "may" be enforced via the disciplinary process, the then-State Bar Executive Committee and the Justice Foundation members were quite clear that discretion would be exercised in determining whether to do so. For example, if a major law firm deliberately ignored the rule it might be called upon to remedy its failure. However, if a government lawyer or retired, but still active, lawyer failed to report that might be excused for obvious reasons.

I am informed that only a small number of lawyers are failing to submit IOLTA reports and the great majority of those fall into the latter category. Making things more difficult for lawyers was not

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the goal of mandatory IOLTA. What possible benefit results from putting lawyers through a disciplinary process based on the "may" contained in the Rule? The kinds of lawyers who are not reporting are very unlikely to add significantly to the Justice Foundation's income.

Some of you may recall the "push back" we got from lawyers who were not particularly happy at the prospect of having money from their trust accounts go to support "tree huggers," "welfare recipients," and others they saw as less than worthy of services that might result from IOLTA monies, even though the alternative was for the banks to retain those funds. Mandatory IOLTA has existed quietly now for many years and I, for one, would like to see it stay that way.

The Montana Supreme Court approved mandatory IOLTA many years ago and I am proud that it has produced enough funds to assist needy Montanans, the Justice Foundation, mediation programs, and other entities around the State. While I cannot speak for all of them, I am confident that most of those for whom I drafted the petition (the "Framers" if you will), would join me in opposing the effort to wield the hammer of discipline on the reporting issue.

Please do not adopt the proposed revision to the MRPC 1.8(e)(1). I believe will only serve to alienate lawyers. That was never the intention.

Sincerely yours,

A handwritten signature in cursive script, reading "Judy A. Williams".

JUDY A. WILLIAMS

Cc: State Bar of Montana
Montana Justice Foundation